

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

STATE OF NORTH DAKOTA, BY AND
THROUGH THE NORTH DAKOTA STATE
BOARD OF HIGHER EDUCATION AND
THE UNIVERSITY OF NORTH DAKOTA,

Plaintiff,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

Defendant.

**AFFIDAVIT OF DR. BERNARD
FRANKLIN**

Civil No. 18-06-C-01333

STATE OF INDIANA)
)ss:
COUNTY OF MARION)

I, Dr. Bernard Franklin, being duly sworn, present this Affidavit in the above-captioned case.

I have first hand and personal knowledge of the following statements:

1. My name is Dr. Bernard Franklin. I am an adult, of sound mind, and am laboring under no disability which would prevent me from accurately giving this testimony by Affidavit.
2. I am making all of the statements in this Affidavit based upon my personal knowledge.
3. I earned a Bachelor of Arts Degree in religion from Simpson College in 1974 and a Master of Education Degree from Western Maryland College (now McDaniel College). I also earned a Doctor of Education Degree from Columbia University Teachers College.

4. I previously served as President of Virginia Union University and Chief Executive Officer of Saint Augustine's College in Raleigh, North Carolina, and Livingstone College and Hood Theological Seminary in Salisbury, North Carolina.

5. I also previously served on the NCAA Executive Committee and as vice-chair of the Division II Presidents Council.

6. I currently serve as the Senior Vice President for Governance and Membership at the NCAA. Among other responsibilities, I serve as the senior staff liaison to the Executive Committee. In that capacity, I have also become familiar with the NCAA's policy regarding Native American nicknames, mascots and imagery at NCAA championship events (the "Policy"). I am also familiar with requests filed by schools seeking exemption from the Policy, including appeals to the Executive Committee.

7. Prior to 2001, many NCAA colleges and universities using Native American nicknames and images concluded that such usage was inappropriate. Those institutions voluntarily changed to team names and logos making no reference to Native American culture. Examples include, among others, Stanford University (Indians to the Cardinal), Syracuse University (Warriors to the Orange), Miami University of Ohio (Redskins to Redhawks), Morningside College (Chiefs to Mustangs) and Seattle University (Chieftans to Redhawks).

8. Dozens of organizations representing Native American interests have opposed the exploitation of Native American images in intercollegiate athletics. These include, among others, the Association on American Indian Affairs, the National Indian Education Association and the National Congress of American Indians. This short list does not include dozens of Resolutions passed by non-Native groups, individual Tribes, inter-tribal councils or countless campus groups asking athletic teams to stop using Native American nicknames and images.

9. Requests for exemption from the Policy governing Native American references at championship contests were referred to a Staff Review Committee which I chaired. Other members of the Staff Review Committee were senior members of the NCAA national office staff including Wally Renfro (Senior Advisor to the President), Kevin Lennon (Vice-President for Membership Services), Charlotte Westerhaus (Vice-President for Diversity and Inclusion), Bob Williams (Managing Director of Public and Media Relations), Corey Jackson (Interim Director for Diversity and Inclusion) and Delise O'Meally (Director of Governance and Membership).

10. In considering each exemption request, the Staff Review Committee reviewed all facts and other information presented by an institution. In deciding whether an institution should remain subject to the Policy, the Staff Review Committee considered each appeal individually and decided each case based on the unique facts and arguments presented.

11. Significant harm could result from judicially-imposed modifications to the NCAA's policies. With over 360,000 student-athletes competing in NCAA events each year, uniform application of rules is important and such modifications would obviously be debilitating to the Association.

12. The NCAA has more than 1,250 member institutions. There is at least one member in every state.

13. Vacating the NCAA Policy, or granting UND an exemption from the Policy after all NCAA appeals have been denied, would deprive the NCAA of authority over its own championship events. It would also harm the NCAA because such an Order would allow a school which employs stereotypic Native American references, absent express consent by a namesake Tribe, to compete in NCAA championship contests. The NCAA does not find the imagery or the exploitation acceptable and chooses not to hold its championship events on a campus with such references.

14. A true and accurate copy of my December 20, 2005 letter to Julie Ann Evans, General Counsel for the University of North Dakota, is attached to the NCAA's Opposition Brief as Exhibit 8.

15. A true and accurate copy of my April 7, 2006 cover letter to President Kupchella, together with a Memorandum to the Executive Committee and Attachments 1-6, are attached to the NCAA's Opposition Brief as Exhibit 5.

16. A true and accurate copy of the April 26, 2006 letter to me from Archie Fool Bear is attached to the NCAA's Opposition Brief as Exhibit 7.

17. A true and accurate copy of the April 27, 2006 letter (including attachments) to me from Ron His Horse is Thunder, Chair of the Standing Rock Sioux Tribe, is attached to the NCAA's Opposition Brief as Exhibit 6.

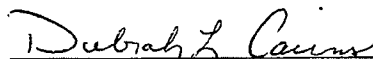
18. I can testify competently hereto if called upon at trial.

FURTHER AFFIANT SAYETH NAUGHT.

I declare under the penalty of perjury of the laws of the United States of America that the above is true and correct to the best of my knowledge and belief.


Dr. Bernard Franklin

Subscribed and sworn to before me this 31st day of October, 2006.


Notary Public

My Commission Expires:

July 24, 2008

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

STATE OF NORTH DAKOTA, BY AND
THROUGH THE NORTH DAKOTA STATE
BOARD OF HIGHER EDUCATION AND
THE UNIVERSITY OF NORTH DAKOTA,

Plaintiff,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

Defendant.

AFFIDAVIT OF DELISE O'MEALLY

Civil No. 18-06-C-01333

STATE OF INDIANA)
)ss:
COUNTY OF MARION)

I, Delise O'Meally, being duly sworn, present this Affidavit in the above-captioned case. I have first hand and personal knowledge of the following statements:

1. My name is Delise O'Meally. I am an adult, of sound mind, and am laboring under no disability which would prevent me from accurately giving this testimony by Affidavit.

2. I am making all of the statements in this Affidavit based upon my personal knowledge.

3. I currently serve as the Director of Governance and Membership at the National Collegiate Athletic Association ("NCAA"). In that capacity, I work closely with the NCAA Executive Committee, oversee Association-wide committees and manage the administrative structure which supports over 127 standing committees. In my capacity, I also oversee the

implementation of specific sections of the Association's strategic plan. I am familiar with the NCAA's policy regarding Native American nicknames, mascots and images at championship events. I am also familiar with exemption requests filed by member institutions impacted by the Policy, including appeals to the Executive Committee.

4. I have worked at the NCAA for nine years. Previous responsibilities at the NCAA include oversight of the interpretations process for all three Divisions, certification of athletics programs in Division I and organization of regional educational efforts on NCAA rules compliance for the 1,250 member colleges and universities.

5. Before joining the NCAA in November 1997, I worked for five years in athletics administration at Morgan State University. I also graduated from Morgan State, where I served as captain of the varsity tennis team.

6. I have a master's degree in Business Administration and will complete my juris doctorate studies at Indiana University School of Law-Indianapolis in 2007.

7. The NCAA organizes and conducts 88 championship competitions each year. Member institutions have no "right" to host a championship event. Member institutions bid for the privilege of hosting post-season contests, but have no enforceable expectation that they will be selected. The NCAA alone has the discretion to select championship sites.

8. There are more than 127 standing committees of the NCAA. While employees of the NCAA national office frequently work with the committees, these employees are generally not members of the committees and do not vote.

9. The artist who designed the UND "Fighting Sioux" logo is not a Sioux.

10. Any opposition by Seminole Tribes to Florida State University's use of the Seminole nickname and imagery was publicly withdrawn immediately after the NCAA Policy was announced. When Florida State's request for exemption was heard, there was no opposition by Seminole Tribes.

11. The Saginaw Chippewa Indian Tribe granted Central Michigan University ("CMU") express permission to use the Tribe name. The Tribe also later reaffirmed its position and entered into joint proclamations with CMU regarding use of the name.

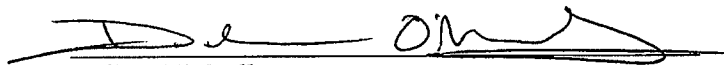
12. The NCAA received no Resolutions or other official statements in opposition from Chippewa Tribes in connection with use of the Tribe name by CMU.

13. CMU uses no Native American imagery, logo or symbol.

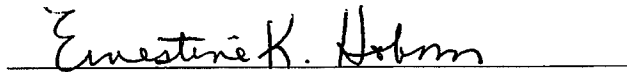
14. I can testify competently hereto if called upon at trial.

FURTHER AFFIANT SAYETH NAUGHT.

I declare under the penalty of perjury of the laws of the United States of America that the above is true and correct to the best of my knowledge and belief.

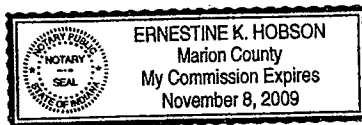

Delise O'Meally

Subscribed and sworn to before me this 31 day of October, 2006.


Notary Public

My Commission Expires:

November 8, 2009



STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

STATE OF NORTH DAKOTA, BY AND
THROUGH THE NORTH DAKOTA STATE
BOARD OF HIGHER EDUCATION AND
THE UNIVERSITY OF NORTH DAKOTA,

Plaintiff,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

Defendant.

AFFIDAVIT OF WALTER HARRISON

Civil No. 18-06-C-01333

STATE OF CONNECTICUT)

)ss:

COUNTY OF HARTFORD)

I, Walter Harrison, being duly sworn, present this Affidavit in the above-captioned case. I have first hand and personal knowledge of the following statements:

1. My name is Walter Harrison. I am an adult, of sound mind, and am laboring under no disability which would prevent me from accurately giving this testimony by Affidavit.
2. I am making all of the statements in this Affidavit based upon my personal knowledge.
3. I graduated from Trinity College in Hartford, Connecticut in 1968 and earned a Master's Degree from the University of Michigan in 1969. I earned a doctorate from the University of California-Davis in 1980.

4. In 1982, I left full-time teaching to take an administrative position at Colorado College. I joined Gehrung Associates University Relations Counselors in 1985, becoming president of the firm shortly thereafter.

5. In 1989, I moved to the University of Michigan, where I became vice president of university relations and secretary of the University.

6. I currently serve as the President of the University of Hartford in West Hartford, Connecticut. Among other positions, I also serve on the Board of Directors of the Connecticut Conference of Independent Colleges and the Hartford Consortium of Higher Education.

7. I also serve as Chair of the National Collegiate Athletic Association ("NCAA") Executive Committee. In that capacity, I have become familiar with the Policy governing Native American nicknames, mascots and imagery at NCAA championship events.

8. The NCAA membership crafted a committee governance structure and empowered the Executive Committee to take action because the membership obviously cannot make or ratify all decisions necessary for operation of the Association.

9. To assist in its work, the Executive Committee appointed a Subcommittee on Gender and Diversity Issues ("the Diversity Subcommittee"). The charge of the Diversity Subcommittee is to review and provide recommendations to the Executive Committee on student-athlete welfare issues as well as gender, minority and youth issues. The Diversity Subcommittee consists of 12 college presidents (four from each Division).

10. The Executive Committee takes action by adopting policies. For example, in 2001 the Executive Committee adopted a policy refusing to hold most NCAA championships (or other meetings) in states which flew the Confederate battle flag.

11. On August 4, 2005, the Executive Committee adopted a policy (the "Policy") regarding use of Native American nicknames, mascots and imagery at NCAA championship events.

12. Neither the NCAA president nor any staff member of the national office voted on the Policy. The Policy became effective February 1, 2006 (except the portion regarding cheerleaders, dance teams and band members, which becomes effective February 1, 2008). Application of the Policy was stayed during the pendency of appeals for those colleges or universities which sought exemptions. All appeals have been resolved.

13. The Policy is designed to further, and does further, the NCAA's Principle of Non-Discrimination.

14. The NCAA Policy at issue was adopted to address serious societal issues including exploitation of a group of people, discrimination against Native Americans, civility in athletics, cultural insensitivity and deep psychological suffering of minorities.

15. The NCAA adopted the Policy at issue to rid its championship environments of images or references which lead to exploitation, discrimination, incivility, insensitivity and psychological harm.

16. The Executive Committee adopted a process where institutions impacted by the Policy could seek to be exempted. The exemption process employed in this context is consistent with the general NCAA process employed in other contexts. Specifically, the long-standing NCAA approach is to adopt a rule of general applicability and then provide a process whereby aggrieved individuals or institutions can seek relief in the form of an exemption or a waiver. That familiar structure is used in connection with the Policy at issue.

17. On a case-by-case basis, exceptional circumstances may justify individual relief from a general position. The NCAA makes room for those extraordinary situations.

18. The namesake exemption adopted in connection with the Policy demonstrates respect for the sovereignty of federally-recognized Native American nations.

19. Several NCAA institutions sought an exemption from the Policy. Every request by every institution was decided on an individual basis because each case presented unique issues and different facts. If two institutions had been similarly situated, those schools would have received identical analysis and identical results. The reality, however, is that no two schools (and no two requests) were alike.

20. Exempting UND from the Policy after all administrative appeals have been denied would undermine the Association's right to draft and administer policies in furtherance of its Constitution. A preliminary injunction reversing three decisions by three leadership bodies at the Association, even in anticipation of trial, would harm the NCAA's integrity and effectiveness in maintaining recognized standards for intercollegiate athletic contests.

21. Not only will the NCAA itself be harmed, but its member institutions will be harmed if a court 1) vacates the Policy, or 2) orders the NCAA to exempt UND from application of the Policy, contrary to three unanimous decisions of the NCAA governance. In addition, other member institutions and student-athletes will be forced to compete in championship events that include stereotypic Native American imagery.

22. A true and accurate copy of the April 28, 2006 letter I sent on behalf of the Executive Committee to President Kupchella is attached hereto. This letter provided immediate notice of the NCAA's decision regarding UND's final appeal.

23. A true and accurate copy of the May 15, 2006 letter I sent on behalf of the Executive Committee to President Kupchella is attached hereto. This letter provided additional detail and information regarding the denial of UND's appeal.

24. I can testify competently hereto if called upon at trial.

FURTHER AFFIANT SAYETH NAUGHT.

I declare under the penalty of perjury of the laws of the United States of America that the above is true and correct to the best of my knowledge and belief.

Walter Harrison
Walter Harrison

Subscribed and sworn to before me this 31 day of October, 2006.

Polly H. Kallen
Notary Public

My Commission Expires:

POLLY H. KALLEN
NOTARY PUBLIC

MY COMMISSION EXPIRES NOV. 30, 2007

STATE OF NORTH DAKOTA

IN DISTRICT COURT

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FURTHER AFFIANT SAYETH NAUGHT.

I declare under the penalty of perjury of the laws of the United States of America that the above is true and correct to the best of my knowledge and belief.

Walter Harrison
Walter Harrison

Subscribed and sworn to before me this 31 day of October, 2006.

Polly H. Kallen
Notary Public

My Commission Expires:
POLLY H. KALLEN
NOTARY PUBLIC
MY COMMISSION EXPIRES NOV. 30, 2007



April 28, 2006

P.O. Box 6222
Indianapolis, Indiana 46206
Telephone: 317/917-6222

Shipping/Overnight Address:
1802 Alonzo Watford Sr. Drive
Indianapolis, Indiana 46202

www.ncaa.org

VIA FACSIMILE

President Charles Kupchella
University of North Dakota
University Station
P.O. Box 8193
Grand Forks, North Dakota 58202-8193

Dear President Kupchella:

As you know, the Executive Committee met today to consider the University of North Dakota appeal regarding application of the policy governing Native American mascots, nicknames and images at NCAA championship events. After careful deliberation, please be advised that the Executive Committee voted to deny the institution's appeal and affirm the decision of the staff review committee.

The Executive Committee felt it important to provide you notice of its decision before speaking with representatives of the press. I will supplement this notification letter with a more detailed letter setting forth the Executive Committee's rationale. I will prepare that letter as quickly as possible and forward it to your attention.

Very truly yours,

A handwritten signature in dark ink that reads "Walter Harrison". The signature is written in a cursive, flowing style.

Walter Harrison, Chair
NCAA Executive Committee

WH:dbv

National Collegiate Athletic Association

An association of over 1,200 members serving the student-athlete
Equal Opportunity/Affirmative Action Employer



May 15, 2006

VIA FACSIMILE AND OVERNIGHT DELIVERY

P.O. Box 6222
Indianapolis, Indiana 46206
Telephone: 317/917-6222

Shipping/Overnight Address:
802 Alonzo Watford Sr. Drive
Indianapolis, Indiana 46202

www.ncaa.org

President Charles E. Kupchella
University of North Dakota
University Station
P.O. Box 8193
Grand Forks, North Dakota 58202-8193

Dear President Kupchella:

I wrote to you on April 28, 2006, and provided notice of the NCAA Executive Committee's action on your institution's appeal from the NCAA policy governing Native American nicknames and imagery at championship events. This letter will supplement that notification and provide additional information about the Executive Committee's decision.

On April 13, 2001, the U.S. Commission on Civil Rights released a statement calling the use of Native American nicknames and images in sports "disrespectful," "offensive" and "particularly inappropriate." The Commission Statement called for the elimination of such stereotypic practices. In the same month, the Executive Committee – which consists of chief executive officers from member institutions in all three divisions – asked the NCAA Minority Opportunities and Interests Committee ("MOIC") and the NCAA Executive Committee Subcommittee on Gender and Diversity Issues ("the Diversity Subcommittee") to review the use of Native American mascots, nicknames, images and logos in intercollegiate athletics. In the four-year period that followed, a number of bodies representing the membership, the public, student-athletes and Native Americans worked with the Association in studying the impact of Native American images in intercollegiate athletics.

The MOIC drafted and followed a "Strategic Plan" and "Research Method" that included gathering data, reviewing historical information and soliciting input from the groups listed above. The MOIC also sought and obtained information from administrators, spectators and alumni at institutions that continued to use Native American mascots, nicknames or imagery and at institutions that formerly used such imagery. The MOIC also reviewed studies, consulted with experts, and read more than 50 pieces of literature presenting various perspectives on this issue.

The MOIC presented its initial report to the Executive Committee in October 2002. A copy of the report was distributed to institutions that used Native American references and a copy is available on the NCAA Web site. The MOIC reported, among other things, that 90 percent of the comments received from member institutions and the public supported the elimination of American Indian mascots, nicknames, images, and logos in intercollegiate athletics. The MOIC

National Collegiate Athletic Association

and the student-athlete
and the student-athlete

also forwarded correspondence to more than 500 American Indian tribes and councils to obtain their thoughts and comments. Ninety-nine percent of responses in this category requested the NCAA to ban the use of Native American mascots in intercollegiate athletics.¹ The MOIC concluded that "those aspects that are offensive should be eliminated to ensure that the NCAA's principles of cultural diversity and gender equity, sportsmanship and ethical conduct and nondiscrimination are adhered to during all athletic events."

Also in 2002, Stephanie Fryberg, Ph.D., of the University of Arizona, independently studied the psychological impact of social representations on Native Americans. She concluded, in part, that exposure to Native American logos or mascots (1) lowers the self-esteem of American Indian students; (2) reduces American Indian students' belief that their community has the power and resources to resolve problems (community efficacy); and (3) reduces the number of achievement-related future goals that American Indian students see for themselves. She also found that while exposure to such social representations lowers self-esteem for American Indian students, it raises the self-esteem of European American students.

Upon completion of the initial report, institutions using Native American mascots or references were asked to complete a self-analysis checklist to determine the impact of Native American references on their respective campuses. By this time, a number of institutions had voluntarily changed nicknames, retired mascots or otherwise stopped using Native American imagery in connection with their athletic programs. The MOIC continued its work, reviewed the institutions' responses and issued recommendations in April 2003. The Diversity Subcommittee reviewed additional input and presented its "Report on References to Native American Indians in Intercollegiate Athletics" to the Executive Committee in August 2005. Based on the findings of the MOIC and the Diversity Subcommittee, based on its review of the supporting information, and based on the values identified in the NCAA constitution, the Executive Committee concluded that use of Native American mascots, nicknames and imagery in intercollegiate athletics was a core issue affecting the entire Association. Accordingly, on August 4, 2005, the Executive Committee adopted a policy regarding the use of such imagery at NCAA championship events. The policy did not and does not require an institution to change its nickname or mascot (if any). The data underlying the Executive Committee policy was subsequently further supported by a thoroughly researched and strongly worded resolution adopted by the American Psychological Association ("APA"). The APA confirmed what the U.S. Commission on Civil Rights, Dr. Fryberg, the MOIC and the Executive Committee had previously concluded: that Native American imagery in athletics has a profoundly negative impact on Native Americans' self image and overall psychological health.

¹ Dozens of organizations representing Native American interests have opposed the exploitation of Native American images in intercollegiate athletics. These include, among others, the Association on American Indian Affairs, the National Indian Education Association and the National Congress of American Indians. This short list does not include resolutions passed by individual tribes, inter-tribal councils or countless campus groups calling on athletic teams to cease using Native American nicknames and related images.

On August 9, 2005, Dr. Myles Brand sent a letter providing notice that the University of North Dakota ("North Dakota") was subject to the Executive Committee's policy regarding Native American mascots, nicknames or imagery at NCAA championship events. In the letter, Dr. Brand explained that institutions had two avenues available for seeking relief from the policy. One avenue was to file appeals with the staff, and ultimately the Executive Committee, challenging application of the policy to that particular institution. The other avenue was to ask the respective divisional presidential bodies to recommend amending or modifying the policy itself.

North Dakota elected to pursue the first option and requested exemption from the policy on August 30, 2005. North Dakota's request for exemption from the policy was presented to the staff review committee, which consists of officials at the NCAA national office including Dr. Bernard Franklin, Wally Renfro, Kevin Lennon, Charlotte Westerhaus, Bob Williams, Corey Jackson and Delise O'Meally.

The staff review committee denied North Dakota's request for exemption from the policy on September 28, 2005, and provided North Dakota notice that it could appeal the decision to the Executive Committee. North Dakota appealed the staff decision to the Executive Committee on November 4, 2005, and filed additional materials dated December 23, 2005; January 30, 2006; and April 13, 2006. The Executive Committee accepted the staff review committee's recommendation that each of North Dakota's submissions be considered, regardless of when each was filed. The Executive Committee also accepted the staff review committee's recommendation that each of North Dakota's arguments be considered, even if not originally presented to the staff review committee as required.

During the time between North Dakota's appeal and the Executive Committee meeting to consider the appeal, there were several relevant factual developments. Therefore, the University and the staff review committee provided supplemental factual information. North Dakota was given the opportunity to respond to the additional factual material provided by the staff. The Executive Committee reviewed the supplemental information and North Dakota's response to the staff's information.

In addition, on April 26, 2006, Archie Fool Bear, Chairman of the Standing Rock Sioux Tribe Judicial Committee, faxed a letter to the NCAA. The letter represented that the Judicial Committee of the Standing Rock Sioux Tribe supported North Dakota's use of the "Fighting Sioux" nickname and logo. On April 27, 2006, North Dakota also faxed a letter purporting to show namesake support from the Standing Rock Sioux Tribe. The Executive Committee considered both of these submissions.

The Executive Committee also reviewed a letter sent on April 27, 2006, from Ron His Horse is Thunder, chairman of the Standing Rock Sioux Tribe. In his letter, the chairman clearly stated that the tribe "maintains its stance opposing the 'Fighting Sioux' athletic nickname and logo used

by the University of North Dakota.” He also noted that the April 26 letter from Archie Fool Bear “does not reflect the official position of the SRST” and that the Council rejected Archie Fool Bear’s efforts to change the tribe’s official position. Attached to the Chairman’s letter was a copy of Council Resolution No. 438-05, dated September 15, 2005, which unambiguously reaffirmed the Standing Rock Sioux Tribe’s official opposition to the North Dakota nickname and logo.² Like the tribe’s 1992 Resolution, the 2005 Resolution calls on North Dakota to “discontinue the use of the ‘Fighting Sioux’ nickname.”

The NCAA Division II President’s Council reviewed the appeal materials on April 27, 2006, and formulated a recommendation for the Executive Committee. Specifically, the Presidents Council recommended that the appeal be denied.

The Executive Committee considered North Dakota’s appeal during its April 28, 2006, meeting to determine whether North Dakota demonstrated that the staff review committee decision was contrary to the evidence. The Executive Committee also considered the Division II Presidents Council recommendation. Like the staff review committee, the Executive Committee considered whether the type of use of mascots, names and/or imagery, including the pervasiveness or degrees of the use, creates or leads to an objectively hostile or abusive environment for members of the campus community and/or the general public and/or the student-athletes involved in intercollegiate competition. The Executive Committee also considered the response of the Native American community as a whole to the impact of such names and symbols, as well as the impact on local Native American peoples. Finally, as discussed below, the Executive Committee considered whether documentation exists showing formal namesake tribe approval of the use of the mascot, name and/or imagery by the institution.

Having reviewed all information submitted, including materials consulted when drafting the policy, and having considered the factors set forth above, the Executive Committee determined that North Dakota’s appeal papers do not support a finding that the staff review committee decision was contrary to the evidence considered. In fact, the Executive Committee concluded that the staff review committee decision was supported by substantial evidence.

The great weight of authority, and information gathered by the Executive Committee (primarily through the work of the MOIC and the Diversity Subcommittee), show that use of Native American imagery, when exploited in athletics, creates an environment that is demeaning, insensitive, hostile or abusive to the Native American community. North Dakota presented no persuasive study, data, authority, research or information to the contrary. Instead, North Dakota cites selected portions of an informal telephone poll reported in a Fargo newspaper.³ North Dakota also

² The NCAA was not aware of the September, 2005 Resolution until it was provided on April 27, 2006.

³ Interestingly, the poll revealed that 80 percent of American Indian alumni from North Dakota disagreed with use of the nickname. April 13, 2006, correspondence, Exhibit C.

acknowledges that this is a matter "on which rational, intelligent, and culturally sensitive minds can disagree." December 23, 2005, Rebuttal, pp. 11-12.

North Dakota was given multiple opportunities to submit information during the appeal process and North Dakota submitted no less than six briefs or substantive arguments.⁴ However, North Dakota simply failed to present sufficient information to the staff review committee or the Executive Committee on which to conclude that the "Fighting Sioux" nickname and related imagery do not create a hostile or abusive environment.

Rather, the Executive Committee noted that North Dakota's use of the "Fighting Sioux" nickname and related imagery is extremely pervasive, appearing on, among other things, facilities, promotional materials, merchandise, competition uniforms and in booster club and alumni group names. North Dakota has made no effort to mitigate or otherwise minimize the extraordinary number of Native American images associated with its athletic program. In fact, the opposite is true.

The Executive Committee also noted that campus groups (including the North Dakota Senate, the North Dakota faculty and the North Dakota Indian Association) object to the "Fighting Sioux" nickname and have requested for years that North Dakota discontinue use of the nickname. For example, in its Resolution opposing the "Fighting Sioux" nickname, the North Dakota Indian Association called the nickname and logo "demeaning" and noted that use of the nickname encourages practices that "trivialize our traditions, culture, and spirituality." UNDIA Resolution GM01-2006.

In addition to campus leadership groups, Native Americans in the community also object to the "Fighting Sioux" nickname and imagery at North Dakota. In fact, the overwhelming majority of area Sioux tribes formally oppose the nickname and have called upon North Dakota to discontinue its use. In their resolutions urging North Dakota to discontinue use of the North Dakota nickname, area Sioux tribes used the following terms to describe the impact of the nickname and related imagery: "most offensive" (Crow Creek Sioux Tribe), "demeaning" (Rosebud Sioux Tribe), "racially insensitive" (Standing Rock Sioux Tribe), "unacceptable" and "dehumanizing" (Sisstan - Wahpeton Sioux Tribe) and "degrad[ing]" (Yaukton Sioux Tribe). These formal objections notwithstanding, North Dakota elected to retain the nickname and pervasive imagery. In addition, the Board of Directors of the United Tribes of North Dakota, which includes representatives of the Spirit Lake Tribe, adopted a Resolution (Intertribal Summit IX Resolution No. 05-06, dated September 8, 2005) stating that continued use of the "Sioux" nickname by North campus towards Native Americans." The Resolution indicates that it was passed with no recorded

⁴ Those materials are dated August 12, 2005; August 30, 2005; November 4, 2005; December 23, 2005; January 30, 2006; and April 13, 2006. These do not include opportunities provided to North Dakota while the Executive Committee was studying the policy at issue and seeking input from institutions employing Native American images. These also do not include the correspondence sent on April 27.

opposition.⁵ These specific accounts and objections from Native Americans in and around North Dakota are consistent with the Executive Committee's general findings and provide ample evidence supporting the staff review committee decision.

The pervasiveness of the nickname and imagery, together with the overwhelming response of the campus and Native American communities, support the staff review committee decision. While the Executive Committee acknowledges that North Dakota provides substantial benefits and services to Native American students, those excellent programs do not give North Dakota license to use Native American nicknames and images in a hostile or abusive manner and still expect to participate in or host NCAA championship events.

Having found ample evidentiary support for the staff review committee conclusion that North Dakota's nickname and imagery create a hostile or abusive environment, the Executive Committee considered whether North Dakota nevertheless has formal approval to use the "Sioux" nickname and related imagery. The Executive Committee reviewed the arguments and submissions on this point and concluded that North Dakota does not have clear and unconditional permission to use the "Sioux" nickname. Indeed, seven area Sioux tribes, as well as the Board of Directors for the United Tribes of North Dakota, expressly and unambiguously object to North Dakota's use of the "Fighting Sioux" nickname and imagery. Most recently, the Standing Rock Sioux Tribe reaffirmed its long opposition in clear terms on September 15, 2005, and April 27, 2006. The tribe expressly supported application of the NCAA policy and called, again, on North Dakota to "discontinue the use of the 'Fighting Sioux' nickname." Council Resolution No. 438-05. The Resolution is consistent with Resolutions passed by other Sioux tribes in and around North Dakota.

North Dakota claims to have conditional support of one tribe, citing Spirit Lake Tribe of Indians Resolution No. A05-01-041, dated December 13, 2000. However, the Spirit Lake Resolution is, at best, conditional and North Dakota has not demonstrated that the prerequisite conditions in the Resolution were satisfied. Even if the conditions were satisfied, which is unclear, the Resolution is merely a statement that the tribe would "not oppose" continued use of the nickname and imagery. This falls short of the affirmative support or permission North Dakota claims from the Spirit Lake Tribe of Indians and is far outweighed by the clear and overwhelming response of other area Sioux tribes. One intention of the Executive Committee policy is to listen to local Native Americans. Here, opposition by Sioux tribes near North Dakota is well documented, barring North Dakota's argument that it enjoys namesake approval.

Based on all the factors identified above, the Executive Committee found that North Dakota did not satisfy its burden of demonstrating that the staff review committee erred or that it should be

⁵ By letter dated March 3, 2006 and addressed to the Executive Committee, the Board of Directors of the United Tribes of North Dakota affirmed that its opposition to the "Fighting Sioux" nickname and logo had not changed as a result of meeting with North Dakota officials.

President Charles E. Kupchella
May 15, 2006
Page No. 7

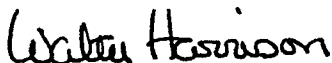
exempted from application of the policy. None of North Dakota's legal arguments dictates a different decision.

The Executive Committee decision regarding application of the policy to North Dakota is final. Accordingly, North Dakota is immediately subject to the protections of the policy. The Executive Committee reiterates that this decision does not mandate that North Dakota change its nickname or logo. Rather, the decision is limited to the conditions of North Dakota's participation in NCAA championship competition and its ability to host NCAA championship events.

As stated above, two avenues were made available to institutions seeking relief from the policy. The avenues are separate, but not mutually exclusive. Although North Dakota has exhausted its appeal regarding application of the policy, North Dakota may still seek to amend or modify the policy itself. As set forth in the August 9, 2005, correspondence, North Dakota may submit "the terms and rationale for the suggested amendment or policy change" to the appropriate presidential body. In this case, that would be the Division II Presidents Council. There is no deadline for seeking amendment or modification.

The Executive Committee appreciates the opportunity to review North Dakota's appeal regarding application of this policy.

Sincerely,



Walter Harrison, chair
NCAA Executive Committee

WH:jw

cc: Selected NCAA Staff Members